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EXAMINER
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* TRAVIS J. PARRY

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Appeal 2007-1046  
Application 09/802,665<sup>1</sup>  
Technology Center 2600

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Decided: February 11, 2008

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Before JOSEPH F. RUGGIERO, MAHSHID D. SAADAT,  
and SCOTT R. BOALICK, *Administrative Patent Judges*.

BOALICK, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-23 and 25, all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> Application filed March 9, 2001. The real party in interest is Hewlett-Packard Development Company, LP.

## STATEMENT OF THE CASE

Appellant's invention relates to a method and system for controlling multiple computing devices that uses a switching device. The switching device establishes wireless links with the computing devices and a wireless link with one or more peripheral devices so that a user can interact with and control the computing devices. (Spec. 5:22 to 6:2.)

Claim 1 is exemplary:

1. A switching device comprising:

a transmitter and a receiver operable to provide wireless communication between the switching device and a selected one of a plurality of available computing devices and between the switching device and a peripheral device;

a computer readable medium having instructions for:

maintaining a list of the available computing devices;

receiving a user communication selecting from among the list of available computing devices; and

utilizing the transmitter and the receiver to establish a first wireless link between the peripheral device and the switching device and a second wireless link between the switching device and a computing device selected from the list of available computing devices;

a processor operable to execute the instructions.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Van Ryzin	US 6,131,130	Oct. 10, 2000
Thomas	US 6,671,756	Dec. 30, 2003

Claims 1-23 and 25 stand rejected under 35 U.S.C. § 103(a) as being obvious over Thomas and Van Ryzin.

Rather than repeat the arguments of Appellant or the Examiner, we make reference to the Briefs and the Answer for their respective details. Only those arguments actually made by Appellant have been considered in this decision. Arguments that Appellant did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).<sup>2</sup>

### ISSUE

The issue is whether Appellant has shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 103(a). That is, given the teachings of the prior art, has Appellant shown that the differences between the claims and the prior art are sufficient to render the claimed subject matter unobvious to a person skilled in the art at the time the invention was made?

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<sup>2</sup> Except as will be noted in this opinion, Appellant has not presented any substantive arguments directed separately to the patentability of the dependent claims or related claims in each group. In the absence of a separate argument with respect to those claims, they stand or fall with the representative independent claim. *See* 37 C.F.R. § 41.37(c)(1)(vii).

## FINDINGS OF FACT

The record supports the following findings of fact (FF) by substantial evidence.

1. Thomas describes a multi-user keyboard, video, and mouse (KVM) switch. (Col. 1, ll. 20-22.) The switch provides access to both a local user and a remote user. (Col. 2, ll. 1-3.) Although the remote user preferably communicates with the switchbox using a CAT5 cable connection, a wireless connection may be used instead. (Col. 2, ll. 4-10.) The switch 2 accommodates a remote workstation 7 that includes a keyboard 9, mouse 10, and monitor 8. (Col. 3, ll. 42-45.) The switch 2 communicates keyboard, mouse, and video signals from the workstation 7 to a set of computers 13. (Col. 3, ll. 52-54; Fig. 1.) Each computer 13 is coupled to the switch 2 by communication lines 14. (Col. 3, ll. 54-55.) An extender product 11 is used to accommodate the distance between the workstation 7 and the switch 2. (Col. 3, ll. 45-51; Fig. 3.) The switch 2 includes a corresponding internal extender 18 to communicate as a transmitter/receiver with the extender 11 and allow the remote user 7 to communicate with the switch 2 over long distances. (Col. 4, ll. 8-16.) The switch may be configured and controlled with an on-screen menu and a channel may be selected by a workstation 7 user. (Col. 4, ll. 36-53.) The computers can be switched by the users through on-screen display selection. (Col. 6, ll. 56-58.) The switch 2

receives keyboard and mouse signals from the workstation and delivers them to the selected computer 13A through the cable 14 into ports 15. (Col. 5, ll. 55-60; Fig. 2.)

2. Van Ryzin describes a system for convergence of a personal computer with wireless audio/video devices that are remotely controlled by a wireless peripheral. (Title; Abstract; Col. 2, ll. 8-22.) Van Ryzin explains that hardwired systems are "both tedious work and expensive to implement." (Col. 1, ll. 25-26.) By contrast, the inventive wireless system allows a user to "place the wireless audio/video devices anywhere in the home without expending the time and money to install costly networks." (Col. 7, ll. 14-19.) With the system of Van Ryzin, a "user positions the wireless audio/video devices anywhere in the home and operates them locally or remotely." (Col. 3, ll. 49-52.) "[W]ireless commands entered at wireless keyboard/mouse touchpad 8 are transmitted to both the wireless computer [2] which controls the audio/video devices in accordance with the wireless commands and to the wireless video monitor which displays the commands for visual confirmation by the user." (Col. 3, ll. 57-62; Fig. 1.)

#### PRINCIPLES OF LAW

All timely filed evidence and properly presented arguments are considered by the Board in resolving an obviousness issue on appeal. *See In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984).

In the examination of a patent application, the Examiner bears the initial burden of showing a prima facie case of unpatentability. *Id.* at 1472.

When that burden is met, the burden then shifts to the applicant to rebut. *Id.*; see also *In re Harris*, 409 F.3d 1339, 1343-44 (Fed. Cir. 2005) (finding rebuttal evidence unpersuasive). If the applicant produces rebuttal evidence of adequate weight, the *prima facie* case of unpatentability is dissipated. *In re Piasecki*, 745 F.2d at 1472. Thereafter, patentability is determined in view of the entire record. *Id.* However, on appeal to the Board it is an appellant's burden to establish that the Examiner did not sustain the necessary burden and to show that the Examiner erred. See *In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [for obviousness] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007).

In *KSR*, the Supreme Court reaffirmed that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 1739. The Court explained:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can

implement a predictable variation, §103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

*Id.* at 1740.

The Court noted that "the [obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *Id.* at 1741. "Under the correct analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed." *Id.* at 1742 "A person of ordinary skill is also a person of ordinary creativity, not an automaton." *Id.*

In *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007), the Federal Circuit concluded that it would have been obvious to combine (1) a mechanical device using a phonograph to play sounds associated with a letter of a word imprinted on a puzzle piece with (2) a modern microprocessor-based device to produce the sound associated with the first letter of a word in a book inserted in the device. The claimed combination was "an old idea or invention . . . using newer technology that is commonly available and understood in the art." *Id.* at 1162. The Federal Circuit reasoned that "[a]ccommodating a prior art mechanical device that accomplishes [a desired] goal to modern electronics would have been



reasonably obvious to one of ordinary skill in designing children's learning devices." *Id.* at 1161.

In reaching its conclusion, the Federal Circuit recognized that "[a]n obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not." *Id.* at 1161 (citing *KSR*, 127 S. Ct. at 1739). Although the combination of prior art references lacked a "reader" to automatically identify the book inserted in the device, the Federal Circuit found no error in the District Court's determination that readers were well-known in the art at the time of the invention. *Leapfrog*, 485 F.3d at 1162. In addition, the Federal Circuit found that the reasons for adding a reader to the combination of prior art references "are the same as those for using readers in other children's toys-namely, providing an added benefit and simplified use of the toy for the child in order to increase its marketability." *Id.* at 1162. The Federal Circuit relied in part on the fact that Leapfrog had presented no evidence that the inclusion of a reader in the combined device was "uniquely challenging or difficult for one of ordinary skill in the art" nor had it presented any evidence that the inclusion of the reader "represented an unobvious step over the prior art." *Id.* (citing *KSR*, 127 S. Ct. at 1740-41). During examination of a patent application, a claim is given its broadest reasonable construction consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969). "[T]he words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal citations omitted). The "ordinary and customary meaning of a claim term is the meaning that the

term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Id.* at 1313.

## ANALYSIS

Appellant contends that the Examiner erred in rejecting claims 1-23 and 25 as being obvious over Thomas and Van Ryzin. Reviewing the record, we do not agree. In particular, we find that Appellant has not shown that the Examiner failed to make a prima facie showing of obviousness with respect to claims 1-23 and 25. Appellant failed to meet the burden of overcoming that prima facie showing.

Regarding claim 1, Appellant argues that "Thomas and Van Ryzin do not teach or suggest a switching device that includes a transmitter and receiver pair having the capabilities recited by the first element of Claim 1." (App. Br. 7; *see also* App. Br. 6-10, Reply Br. 2-4.) We do not agree.

The Examiner correctly found that Thomas meets all the limitations of claim 1 except for the second communication link between the switching device and the peripheral device being a wireless link. (Ans. 4-5, 16; *see also* FF 1.) The Examiner also correctly found that Van Ryzin teaches a wireless link between the switch (personal computer 2) and computing devices (wireless audio/video devices). (Ans. 4-5, 16; FF 2.) In addition, the Examiner found that one of ordinary skill in the art would have modified Thomas to prove a wireless connection between the switch and the computers in addition to a wireless connection between the switch and the user workstation. (Ans. 5; 16-18.) As shown by Van Ryzin (FF 2), the substitution of the more modern wireless connection in place of wired

connections between the switch and the computing device was within the ordinary skill of the practitioner, with no unexpected results. Thus, we agree with the Examiner that claim 1 would have been obvious to a person of ordinary skill in the art at the time of the invention.

Appellant argues that if Thomas were modified by Van Ryzin, the modification would result in a switching device with two transmitter and receiver pairs, i.e., "a first transmitter and receiver pair for communicating with a peripheral device and a second transmitter and receiver pair capable of communication with a computing device." (App. Br. 7; *see also* App. Br. 8-10.)

We do not agree that the combined teachings of Thomas and Van Ryzin are so narrowly drawn. Van Ryzin does not teach separate transmitter and receiver pairs for the switch to communicate with the peripheral devices and the computing devices. Thus, we do not agree that a modification of Thomas in view of the teachings of Van Ryzin to update the wired connections with wireless connections would result in a switch with two transmitter and receiver pairs.

Appellant further argues that "Van Ryzin simply teaches a computer that is capable of wirelessly indiscriminately broadcasting a selected wired signal." (Reply. Br. 3-4) Appellant contends that Van Ryzin does not show "selection between or among wireless speakers (12) and wireless monitor (10)" (Reply. Br. 3) and, although it describes a transmitter (20) for the computer (2) to broadcast to the wireless speakers (12), Van Ryzin does not mention a receiver that enables the computer (2) to wirelessly communicate with the wireless speakers (12) and wireless monitor (10). (Reply Br. 3-4.)

Again, we do not agree. First, the plain language of the claim merely requires a "wireless link" be established between the switching device and the computing device. As drafted, the claim does not require two-way communications. Therefore, under a broad but reasonable interpretation of the claim, a one way wireless broadcast satisfies the "wireless link" limitation. Furthermore, Van Ryzin suggests two way communications with wireless audio/video devices. (FF 2.)

Accordingly, we conclude that Appellant has not shown that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a). Dependent claims 2-9 were not argued separately, and fall together with independent claim 1.

With respect to independent claim 10 and similarly to claim 1, Appellant argues that Van Ryzin "does not teach a wireless communication between a switching device and a computer or the components that would be capable of such communication." (App. Br. 12; *see also* App. Br. 10-12; Reply Br. 4-6.) Appellant also repeats the argument that "Van Ryzin simply teaches a computer that is capable of wirelessly indiscriminately broadcasting a selected wired signal." (Reply Br. 5.) We do not agree.

As discussed with respect to claim 1, Van Ryzin teaches wireless communication between a switch and a computing device. (FF 2.) Claim 10 merely requires a "wireless link between the switching device and a computing device selected from the list of available computing devices enabling wireless user interaction." Again, this limitation does not require two-way communications. Under a broad but reasonable interpretation, a one-way wireless broadcast satisfies the "wireless link" limitation. In

addition, as discussed with respect to claim 1, Van Ryzin suggests two-way communications with wireless audio/video devices. (FF 1.)

Accordingly, we conclude that Appellant has not shown that the Examiner erred in rejecting claim 10 under 35 U.S.C. § 103(a). Dependent claims 11-15 were not argued separately, and fall together with independent claim 10.

Appellant nominally argues the rejection of independent claim 16 separately. (App. Br. 12; Reply Br. 6.) However, Appellant merely asserts patentability of claim 16 for the same reasons advanced with respect to independent claim 10. (App. Br. 12; Reply Br. 6.) Therefore, we will sustain the rejection of claim 16 for the reasons discussed with respect to claim 10. Dependent claims 17-20 were not argued separately, and fall together with independent claim 16.

With respect to independent claims 21 and 25, Appellant argues that "[a]s made clear above, Thomas and Van Ryzin fail to teach device and system components capable of establishing a second wireless link with a selected computing device." (App. Br. 13-14; Reply Br. 7-8.) For the reasons discussed previously, we do not agree. Therefore, we will sustain the rejection of claims 21 and 25. Dependent claims 22-23 were not argued separately, and fall together with independent claim 21.

#### CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellant has not shown that the Examiner erred in rejecting claims 1-23 and 25.

DECISION

The rejection of claims 1-23 and 25 for obviousness under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

KIS

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